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14 Attorneys for Plaintiff  
15 VISA U.S.A. INC.

16  
17 IN THE UNITED STATES DISTRICT COURT  
18  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
20

21 VISA U.S.A. INC.,

22 Plaintiff,

23 vs.

24 MARITZ INC., d/b/a MARITZ  
25 LOYALTY MARKETING,

26 Defendant.

27  
28 AND RELATED COUNTERCLAIMS.

Case No. CV-07-5585 JSW

**DECLARATION OF RODERICK M.  
THOMPSON IN SUPPORT OF VISA USA  
INC.'S OPPOSITION TO DEFENDANT  
MARITZ INC.'S REQUEST FOR  
DISCOVERY**

Date: February 22, 2008  
Time: 1:30 p.m.  
Dept: Courtroom 2 (17th Floor)  
Judge: Hon. Jeffrey S. White

I, Roderick M. Thompson, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and a partner with the law firm of Farella Braun + Martel LLP, counsel for Plaintiff Visa U.S.A. Inc. ("Visa") in this action. I have first hand knowledge of the following facts; if called as a witness, I would testify to the same.

2. On July 2, 2007, Elizabeth Buse of Visa sent a letter to Kelvin Taylor of Maritz.  
See Ex. E to Declaration of Roderick M. Thompson In Support of Motion to Stay Action and To

1 Compel Arbitration, filed January 4, 2008 D.E # 27 (Hereafter “Thompson Motion To Stay  
2 Decl.”). In that letter, Ms. Buse stated that it was time to discuss “Maritz’s claims, as well as the  
3 nature and amount of Visa’s claims.” She described Visa’s proposal for a three stage dispute  
4 resolution process and requested that Maritz have its legal counsel get in touch with me to  
5 establish a mutually acceptable procedure. *Id.* Ms. Buse also stated that it was “important to  
6 have this agreement on process in place before we commence negotiations.” *Id.*

7 3. Late in the morning of July 5, 2007, I received a voicemail message from Mr.  
8 Steve Gallant, Associate General Counsel of Maritz, asking me to call him in response to the  
9 request in Ms. Buse’s letter. At my direction, a transcription of the audio file of that voicemail  
10 has been transcribed. A true and correct copy of a transcription of that voicemail message is  
11 attached as Ex. A. In the early afternoon of July 5, I returned Mr. Gallant’s call. During that call,  
12 Mr. Gallant expressed general agreement with the approach for dispute resolution suggested in  
13 the Buse letter, commenting “I like what you proposed.” He wanted to add specific timeframes  
14 for the three steps, and suggested the 30, 60 and 90 day time periods. Mr. Gallant mentioned he  
15 would be out of the office until Tuesday, July 10, 2007.

16 4. Our firm’s long distance billing records reflect that at 1:13 p.m. on July 5, 2007, a  
17 call was made from our firm to (636) 827-4290, the phone number Mr. Gallant left on his voice  
18 message. The records show that the call lasted 11 minutes and 54 seconds.

19 5. On July 9, I faxed to Mr. Gallant a letter setting forth the procedure we had  
20 discussed on the July 5 call, and requesting that he “Please confirm Maritz’ [sic] agreement to the  
21 foregoing” by countersigning the letter. *See* Ex. F to Thompson Motion To Stay Decl. Early in  
22 the morning of July 10, Mr. Gallant left me a voicemail saying that he had expected to receive my  
23 letter but could not find a copy. In response, I sent him by email two PDF copies of my letter  
24 between 8:00 and 10:00 a.m. Our firm’s long distance billing records reflect that at 9:50 a.m. on  
25 July 10, 2007, a call was made from our firm to the phone number (636) 827-4290. The records  
26 show that the call lasted 1 minute and 24 seconds. I do not recall whether Mr. Gallant and I  
27 spoke during that call or whether I merely left a voice message.  
28

1           6.       Mr. Gallant left another voicemail message for me sometime before 1:00 p.m. that  
2 same day, saying that he had signed off on the letter and suggested several dates for the in-person  
3 meeting with his preference being July 24, 2007. At my direction, a transcription of the audio file  
4 of that voicemail has been transcribed. A true and correct copy of a transcription of that  
5 voicemail message is attached as Ex. B. I received an email message from Mr. Gallant at 1:18  
6 p.m. on July 10, attaching a signed copy of my July 9 letter. *See* Thompson Motion To Stay  
7 Decl., Exs. G and F.

8           7.       During these conversation(s) and voicemails between Mr. Gallant and myself  
9 during the July 5-10, 2007 time period there was no discussion of the nature or amount of either  
10 party's claims. We spoke of the ADR procedure only (and of Mr. Gallant's upcoming vacation  
11 plans, which I recall included some kind of annual golf outing).

12           8.       Based on my recollection of our conversation(s), as confirmed by a review of the  
13 attached transcripts of his voicemail messages, I understood that Mr. Gallant was out of his office  
14 during the periods July 6-9 and July 11-22. I sent Mr. Gallant via fax and email my letter dated  
15 July 19, enclosing a draft Alternate Dispute Resolution Protocol, which specified in more detail  
16 the three stage ADR process in the July 10 Letter Agreement. *See* Ex. E to the Declaration of  
17 Ryan S. Hilbert In Support of Maritz's Motion To Stay Arbitration Pending Determination of  
18 Arbitrability. That letter notes that the attached protocol "defines the direct business negotiations  
19 which are to begin on July 24, 2007 in St. Louis as the beginning of the mediation process so that  
20 both sides will have the protections of California Evidence Code section 1115 *et. seq.*"

21           9.       Mr. Gallant called me on July 23, 2007. That telephone call is described in my  
22 earlier declaration. *See* First Decl., ¶ 9. To my knowledge this July 23 call was the first time  
23 Mr. Gallant or anyone from Maritz asked me or anyone at Visa about the nature or amount of  
24 Visa's damages.

25           10.      Attached as Ex. C is a true and correct copy of the parties' July 24, 2007  
26 agreement that their discussions would be covered by California's mediation protections.

27       ///

28       ///

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed on February 4, 2008, at San Francisco, California.  
4

5 /s/ Roderick M. Thompson  
6 Roderick M. Thompson  
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